

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

MANDRICK HOLMES *et al.*
ADC #152514

PLAINTIFFS

V.

NO: 5:13CV00007 BSM/HDY

DAVID HALL *et al.*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to Chief United States District Judge Brian S. Miller. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the

hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Plaintiffs Mandrick Holmes and Shay Humphrey filed a *pro se* complaint, pursuant to 42 U.S.C. § 1983, on January 10, 2013. Only Holmes filed an application for leave to proceed *in forma pauperis* (“IFP”), and the claims in the complaint appeared to pertain only to Holmes. Accordingly, on February 28, 2013, the Court entered an order granting Holmes’s IFP application, and directing Plaintiffs to file an amended complaint within 30 days (docket entry #3). That order also directed Humphrey to pay the full filing fee or to file an IFP application within 30 days, and warned Plaintiffs that their failure to respond would result in the recommended dismissal of their claims. More than 30 days have passed, and Humphrey has not paid the filing fee or filed an IFP application, and neither Plaintiff has filed an amended complaint or otherwise responded to the order. Additionally, mail sent to Holmes’s address of record has been returned as undeliverable (docket entry #4). Under these circumstances, the Court concludes that Plaintiffs’ complaint should be dismissed without prejudice for failure to comply with Local Rule 5.5(c)(2), and for failure to respond to the Court’s order. *See Miller v. Benson*, 51 F.3d 166, 168 (8th Cir. 1995) (District courts have inherent power

to dismiss *sua sponte* a case for failure to prosecute, and exercise of that power is reviewed for abuse of discretion).

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiffs' complaint be DISMISSED WITHOUT PREJUDICE for failure to comply with Local Rule 5.5(c)(2), and for failure to respond to the Court's order.

2. The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

DATED this 4 day of April, 2013.


UNITED STATES MAGISTRATE JUDGE